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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/696,519	10/25/2000	Jeffrey H. Mumm	38,096	2591

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EXAMINER

GOFF II, JOHN L

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/696,519

Applicant(s)

MUMM ET AL.

Examiner

John L. Goff

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-- Th MAILING DATE of this communication appears on th cover sheet with the correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 34-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 34-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

1. This action is in response to Amendment B filed on 8/11/03. The previous 35 USC 112 rejections have been overcome.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-5, 13-19, 21-27, 34, 38, 41, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smedberg (U.S. Patent 3,684,600) in view of the admitted prior art (Claim 1 and Specification pages 1-7).

Smedberg is directed to a process for manufacturing a tufted carpet with high fuzz resistance (Column 1, lines 14-24 and Column 2, lines 10-12 and Column 5, lines 74-75).

Smedberg teaches a method for manufacturing the tufted carpet comprising supplying a tufted primary backing having a bottom surface (stitched side), applying to the bottom surface a low

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viscosity aqueous pre-coat adhesive solution (stitch bind composition), drying the pre-coat, coating a backsizing composition (thermoplastic binder) on the pre-coat, and laminating a secondary scrim (additional backing) to the backsizing composition (Figure and Column 3, lines 1-5, 11-14 and Column 6, lines 28-34 and 49-51). Smedberg teaches the primary backing comprises spunbound polypropylene (Column 8, lines 36-38). Smedberg teaches the pre-coat adhesive comprises an aqueous component and an organic polymer component that is film forming and thermoplastic (e.g. polyethylene, ethylene/acrylic acid copolymers, styrene/butadiene copolymers, etc.) (Column 5, lines 27-47 and Column 6, lines 28-34 and 49-51). Smedberg teaches the organic polymer component is ^{less} ~~les~~ than 40 percent of the pre-coat adhesive (Column 6, lines 30-33). Smedberg teaches the pre-coat adhesive has a low viscosity, 2-2000 cps, to be effective, i.e. because the pre-coat has a low viscosity it can readily penetrate the fiber bundles on the stitched side of the primary backing (Column 3, lines 61-74 and Column 5, lines 18-20). Smedberg teaches the pre-coat adhesive is applied in amounts of 1.5 oz or less. However, Smedberg teaches the necessary amount of pre-coat adhesive is dependent on the carpet yarn density and the effectiveness of the adhesive itself (Column 6, lines 52-60). Smedberg further teaches the thermoplastic binder comprises resins such as ethylene/vinyl acetate, polyethylene, and ethylene/acrylate copolymers (Column 7, lines 1-3). Smedberg is silent as to applying the backsizing composition (thermoplastic binder) in a manner other than coating such as by extrusion or melting/softening a solid binder. It is noted Smedberg teaches the backsizing composition can be applied by means other than applicator rolls (coating) (Column 3, lines 37-41). Absent any unexpected results, one of ordinary skill in the art at the time the invention was made would have readily appreciated applying the backsizing

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composition (thermoplastic binder) taught by Smedberg through extrusion or melting/softening the binder rather than coating as these techniques for applying a thermoplastic binder to a tufted primary backing were well known in the art as shown for example by the admitted prior art.

Regarding claim 5, Smedberg teaches using thermoplastic binders having for example a MI of 2 (Column 8, lines 40-41). Furthermore, Smedberg is not limited to any particular thermoplastic binder material as Smedberg discloses a plurality of different materials useful as the thermoplastic binder such that each material used would have a different melt index and absent any unexpected results it would have been well within the purview of one of ordinary skill in the art to use a material having a melt index in the broad range claimed.

Regarding claims 16 and 17, Smedberg is silent as to the organic polymer component of the pre-coat adhesive comprising a crosslinkable organic polymer. One of ordinary skill in the art at the time the invention was made would have readily appreciated using as the organic polymer taught by Smedberg a crosslinkable organic polymer such as crosslinked styrene butadiene copolymer as crosslinkable organic polymers were known organic polymer binders as shown by the admitted prior art, only the expected results would be achieved.

Regarding claim 26, it is noted Smedberg teaches using a pre-coat adhesive comprising an organic component in an aqueous solution, i.e. the adhesive includes a liquid component. It is noted that while an aqueous solution is one that is made from, with, or by water, Smedberg does not specifically recite using water as the liquid component of the solution. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use water as the liquid component of the aqueous solution taught by Smedberg as it is well known and conventional in the art to use water as the liquid component in aqueous solutions.

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The admitted prior art is directed to known techniques for applying a thermoplastic binder to the stitched side of a tufted primary backing. The admitted prior art teaches it was known to extrude the binder onto the backing (Claim 1, lines 7-8). The admitted prior art teaches it was also known to melt/soften a solid binder in contact with the backing (Claim 1, lines 8-10). The admitted prior art teaches known organic polymers (such as crosslinked styrene-butadiene copolymer) for use in aqueous binder compositions (Specification page 2, lines 8-10).

5. Claims 6-8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smedberg and the admitted prior art as applied above in paragraph 9, and further in view of Kato (U.S. Patent 4,836,871) and Bogdany (U.S. Patent 4,836,871).

Regarding claims 6-8, Smedberg and the admitted prior art as applied above teach all of the limitations in claims 6-8 except for a teaching on applying the aqueous pre-coat adhesive as a spray, foam, or froth. It is noted Smedberg teaches the pre-coat can be applied by means other than applicator rolls (coating) (Column 3, lines 37-41). Absent any unexpected results, one of ordinary skill in the art at the time the invention was made would have readily appreciated applying the aqueous pre-coat adhesive taught by Smedberg as modified by the admitted prior art as a spray, foam, or froth as it was well known in the art to apply aqueous binders using these techniques as shown for example by Kato and Bogdany.

Regarding claim 20, Smedberg and the admitted prior art as applied above teach all of the limitations in claim 20 except for a teaching on the organic polymer component of the aqueous pre-coat adhesive comprising a styrene acrylate copolymer. Absent any unexpected results, one of ordinary skill in the art at the time the invention was made would have readily appreciated

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using as the organic polymer component taught by Smedberg as modified by the admitted prior art a styrene acrylate copolymer as it was a known organic polymer component for use in an aqueous binder composition as shown by Kato.

Kato is directed to using a resin aqueous emulsion or a heat crosslinkable resin aqueous emulsion to adhere a base fabric (tufted carpet) to a secondary surface (Column 4, lines 16-37 and 41-68). Kato teaches that the resin aqueous emulsion may comprise a number of organic copolymers including a styrene acrylate copolymer, such as styrene-methyl methacrylate copolymer (Column 6, lines 63-68 and Column 7, lines 1-4). Kato further teaches applying the resin aqueous emulsion as a spray, foam, or the like (Column 8, lines 13-15). Bogdany is directed to a carpet backing adhesive used to adhere a tufted carpet to a secondary backing. Bogdany teaches applying the adhesive tufted carpet as a froth (Column 2, lines 12-15).

6. Claims 9-12, 35-37, 39, 40, 42, 43, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smedberg and the admitted prior art as applied above in paragraph 9, and further in view of Bieser et al. (WO 98/38375).

Regarding claims 9-12, Smedberg and the admitted prior art are silent as to the tufted carpet comprising a primary backing made of a woven polypropylene and face yarns made of nylon, polyester, or polypropylene filaments. One of ordinary skill in the art at the time invention was made would have readily appreciated the primary backing taught by Smedberg as modified by the admitted prior art comprising woven polypropylene as it was well known in the art to form the primary backing of a tufted carpet as a woven material as shown for example by Bieser et al. as only the expected results would be achieved. As to the face yarns, one of ordinary skill in the art at the time invention was made would have readily appreciated the face

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yarns taught by Smedberg as modified by the admitted prior art to comprise nylon, polyester, or polypropylene filaments as it was well known in the art to form the face yarns of a tufted carpet from these materials as shown for example by Bieser et al., only the expected results would be achieved.

Regarding claims 35-37, 39, 40, 42, 43, and 45, Smedberg and the admitted prior art are silent as to the primary backing or the additional backing comprising woven polypropylene tapes or yarns with an optional thermoplastic binder in the form of a nonwoven fabric needled thereto. Absent any unexpected results, one of ordinary skill in the art at the time the invention was made would have readily appreciated using as the primary backing or additional backing taught by Smedberg as modified by the admitted prior art a backing comprising woven polypropylene tapes or yarns with an optional thermoplastic binder in the form of a nonwoven fabric needled thereto as this was a known backing in the art for tufted carpets as shown by Bieser et al.

Bieser et al. are directed to a process for manufacturing a tufted carpet. Bieser et al. teach a tufted carpet comprising a primary backing material such as woven or non-woven polypropylene (Page 1, lines 36-37 and Page 2, lines 1-3). Bieser et al. teach the face yarn of the tufted carpet is made from various materials including nylon, polyester, and polypropylene (Page 30, lines 17-19). Bieser et al. teach a method for manufacturing the tufted carpet comprising supplying a tufted primary backing having a bottom surface (stitched side), applying to the bottom surface an aqueous pre-coat solution (stitch bind composition), drying the pre-coat, extruding a thermoplastic binder on the pre-coat, and laminating a secondary backing (additional backing) to the thermoplastic binder (Page 32, lines 28-30, Page 35, lines 21-23 and 30-33 and Page 36, lines 1-3). Bieser et al. teach the pre-coat comprises an aqueous component (e.g. water)

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and an organic polymer component that is film forming and thermoplastic (e.g. polyethylene, ethylene acrylic acid, etc.) (Page 32, lines 30-33 and Page 33, lines 1-3). Bieser et al. teach the organic polymer component is 10 to 75 percent by weight of the pre-coat (Page 33, lines 5-8). Bieser et al. teach the pre-coat has a viscosity of 3000-50000 cps (Page 34, lines 16-18). Bieser et al. teach the pre-coat adhesive is applied in amounts of 4-12 oz of carpet (Page 35, lines 12-16). Bieser et al. teach using as the thermoplastic binder materials having an MI of 1 to 500 g/10 min (Page 28, lines 2-7). Bieser et al. further teach the backing materials may comprise woven polypropylene yarns (leno weave) with an optional thermoplastic binder in the form of nonwoven polypropylene fibers needled thereto (Page 44, lines 5-8, 21-25, and 29-32 and Page 45, lines 26-30).

7. Claims 1-5, 9-15, 18, 19, 21-27, and 34-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bieser et al. in view of Smedberg.

Bieser et al. are directed to a process for manufacturing a tufted carpet. Bieser et al. teach a tufted carpet comprising a primary backing material such as woven or non-woven polypropylene (Page 1, lines 36-37 and Page 2, lines 1-3). Bieser et al. teach the face yarn of the tufted carpet is made from various materials including nylon, polyester, and polypropylene (Page 30, lines 17-19). Bieser et al. teach a method for manufacturing the tufted carpet comprising supplying a tufted primary backing having a bottom surface (stitched side), applying to the bottom surface an aqueous pre-coat solution (stitch bind composition), drying the pre-coat, extruding a thermoplastic binder on the pre-coat, and laminating a secondary backing (additional backing) to the thermoplastic binder (Page 32, lines 28-30, Page 35, lines 21-23 and 30-33 and Page 36, lines 1-3). Bieser et al. teach the pre-coat comprises an aqueous component (e.g. water)

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and an organic polymer component that is film forming and thermoplastic (e.g. polyethylene, ethylene acrylic acid, etc.) (Page 32, lines 30-33 and Page 33, lines 1-3). Bieser et al. teach the organic polymer component is 10 to 75 percent by weight of the pre-coat (Page 33, lines 5-8). Bieser et al. teach the pre-coat has a viscosity of 3000-50000 cps (Page 34, lines 16-18). Bieser et al. teach the pre-coat adhesive is applied in amounts of 4-12 osy of carpet (Page 35, lines 12-16). Bieser et al. teach using as the thermoplastic binder materials having an MI of 1 to 500 g/10 min (Page 28, lines 2-7). Bieser et al. further teach the backing materials may comprise woven polypropylene yarns (leno weave) with an optional thermoplastic binder in the form of nonwoven polypropylene fibers needled thereto (Page 44, lines 5-8, 21-25, and 29-32 and Page 45, lines 26-30).

Regarding claims 1, 4, 13, 23-27, 38, 41, and 44, Bieser et al. are silent as to the pre-coat having a viscosity less than 3000 cps. Absent any unexpected results, one of ordinary skill in the art at the time the invention was made would have readily appreciated the pre-coat taught by Bieser et al. having a viscosity less than 3000 cps as it was known in the art to use pre-coats with low viscosities, 2-2000 cps, to ensure the pre-coat can readily penetrate the fiber bundles of the stitched side of the primary backing as shown above by Smedberg.

Regarding claims 1 and 23-27, Bieser et al. are silent as to applying the pre-coat in an amount less than 4 osy. One of ordinary skill in the art at the time the invention was made would have readily appreciated applying the pre-coat taught by Bieser et al. in an amount less than 4 osy as it was known in the art as shown above by Smedberg, only the expected results would be achieved. Furthermore, it is noted Smedberg teaches the necessary amount of pre-coat adhesive is dependent on the carpet yarn density and the effectiveness of the adhesive itself.

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Regarding claim 21, Bieser et al. are silent as to the organic polymer component of the pre-coat comprising a styrene butadiene copolymer. Absent any unexpected results, one of ordinary skill in the art at the time the invention was made would have readily appreciated using as the organic polymer taught by Bieser et al. a styrene butadiene copolymer as this was a known organic polymer component for use in pre-coat adhesives as shown above by Smedberg.

Regarding claim 26, Bieser et al. are silent as to applying the thermoplastic binder in a manner other than extrusion such as by coating. Absent any unexpected results, one of ordinary skill in the art at the time the invention was made would have readily appreciated applying the thermoplastic binder taught by Bieser et al. through coating the binder rather than extruding the binder as this technique for applying a thermoplastic binder (coating) to a tufted primary backing was well known in the art as shown for example above by Smedberg.

8. Claims 6-8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bieser et al. and Smedberg as applied above in paragraph 12, and further in view of Kato (U.S. Patent 4,836,871) and Bogdany (U.S. Patent 4,836,871).

Regarding claims 6-8, Bieser et al. and Smedberg as applied above teach all of the limitations in claims 6-8 except for a teaching on applying the aqueous pre-coat as a spray, foam, or froth. It is noted Bieser et al. teach the pre-coat can be applied in various ways (Page 35, lines 6-9), and Smedberg teaches the pre-coat can be applied by means other than applicator rolls (coating) (Column 3, lines 37-41). Absent any unexpected results, one of ordinary skill in the art at the time the invention was made would have readily appreciated applying the aqueous pre-coat taught by Bieser et al. as modified by Smedberg as a spray, foam, or froth as it was well known

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in the art to apply aqueous binders using these techniques as shown for example above by Kato and Bogdany.

Regarding claim 20, Bieser et al. and Smedberg as applied above teach all of the limitations in claim 20 except for a teaching on the organic polymer component of the aqueous pre-coat comprising a styrene acrylate copolymer. Absent any unexpected results, one of ordinary skill in the art at the time the invention was made would have readily appreciated using as the organic polymer component taught by Bieser et al. as modified by Smedberg a styrene acrylate copolymer as it was a known organic polymer component for use in an aqueous binder composition as shown above by Kato.

9. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bieser et al. and Smedberg as applied above in paragraph 12, and further in view of the admitted prior art (Specification pages 1-7).

Bieser et al. and Smedberg as applied above teach all of the limitations in claims 16 and 17 except for a teaching on the organic polymer component of the pre-coat comprising a crosslinkable organic polymer. Absent any unexpected results, one of ordinary skill in the art at the time the invention was made would have readily appreciated using as the organic polymer taught by Bieser et al. as modified by Smedberg a crosslinkable organic polymer such as crosslinked styrene butadiene copolymer as crosslinkable organic polymers were known binders in the art as shown above by the admitted prior art.

Response to Arguments

10. Applicant's arguments with respect to claims 1-27 and 41-45 have been considered but are moot in view of the new ground(s) of rejection. Applicant argues "The 5,000-50,000 viscosities required for Smedberg's hot melt adhesives would be understood by persons skilled in the art as too low for application by extrusion". It is noted applicant has not provided any evidence showing that the thermoplastic binders taught by Smedberg cannot be extruded. Furthermore, while Smedberg discloses thermoplastic binders having a broad viscosity range there are no teachings in the admitted prior art against using thermoplastic binders having viscosities in this range such that because Smedberg and the admitted prior art teach thermoplastic binders comprising substantially the same materials it would have been well within the purview of one of ordinary skill in the art at the time the invention was made to extrude the thermoplastic binders taught by Smedberg as Smedberg teaches the thermoplastic binders can be applied by any sufficient means and extruding thermoplastic binders to apply them to carpet backings is well known in the art as shown for example by the admitted prior art. Applicant further argues "Applicant's claims further distinguish over Smedberg because the stitch bind composition according to the claims includes an aqueous liquid component that can be removed by heating to a temperature low enough to avoid damage to components of the tufted backing to which it is applied". It is noted Smedberg teaches the stitch bind composition may comprise an aqueous liquid component that is removed prior to the application of the thermoplastic binder (Column 6, lines 27-34 and 49-51). Applicant further argues "Bieser also fails to disclose backings with thermoplastic binders affixed thereto or incorporated therein as in claims 36 and 37". It is noted Bieser teaches backings for carpet comprising woven polypropylene yarns (leno

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weave) with an optional thermoplastic binder in the form of nonwoven polypropylene fibers needed thereto (Page 44, lines 5-8, 21-25, and 29-32 and Page 45, lines 26-30). Applicant further argues "Bieser specifically teaches dispersion viscosities and application rates for his thermoplastic binder process that well exceed those disclosed by Smedberg. Persons skilled in the art clearly would have no motivation to discard those express teachings in favor of the precoat adhesive viscosities and application rates of Smedberg, which are not only entirely outside the ranges disclosed by Bieser, but disclosed by Smedberg in regard to and in conjunction with use of a different form of adhesive and lamination process". It is noted both Bieser and Smedberg are directed to applying a stitch bind composition and thermoplastic binder to a carpet backing such that one of ordinary skill in the art employing the process taught by Bieser would readily look to the teachings of Smedberg and one of ordinary skill in the art would readily use the viscosities and application rates taught by Smedberg in Bieser for the reasons given above.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John L. Goff** whose telephone number is **703-305-7481** (after December 2003 the telephone number will be 571-272-1216). The examiner can normally be reached on M-Th (8 - 5) and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 703-308-3853. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John L. Goff



JEFF H. AFTERGUT
PRIMARY EXAMINER
GROUP 1300